



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Miss K Oliver

**Respondent:** Durham Tees Care Limited T/A Kare Plus

**Heard at:** North Shields Hearing Centre      **On:** 3 – 5 February 2020  
**Chambers:** 20 February 2020

**Before:** Employment Judge Langridge

**Members:** Mr R Dobson  
Mrs P Wright

**Representation:**

**Claimant:** In person  
**Respondent:** Mr P Clarke (Consultant)

## JUDGMENT

1. The claimant's discrimination claims under sections 13, 18 and 26 of the Equality Act 2010 were not brought within the three month time limit set by section 123 of the Act. There were no grounds on which the Tribunal considered that it was just and equitable to extend the time for the claims to proceed.
2. In any event, the Tribunal finds that the respondent did not discriminate against the claimant because of her pregnancy or her sex, nor was she harassed by the respondent.
3. The claimant's claims therefore fail and are dismissed.

# REASONS

## Introduction

1. The claimant's application form ET1 was received by the Tribunal on 7 March 2019, at a time when she was still employed by the respondent. Her claims arose from the fact that she was pregnant and took maternity leave during her employment. The claimant made various allegations about the conduct of the respondent's managers, starting with a meeting on 14 March 2018 when she announced her pregnancy, and continuing throughout her employment. The claims alleged that the claimant had been treated unfavourably through the comments and behaviour of the respondent's office manager, as well as through the handling of her working arrangements, sickness absence and maternity leave arrangements. The claimant also complained about the handling of a redundancy consultation exercise which had taken place by the time her claim was issued. At a preliminary hearing on 16 May 2019 Judge Shepherd allowed the claimant to amend her claim form by setting out a detailed chronology of certain factual allegations beginning on 14 March 2018 and ending on 20 December 2019, after the employment had ended by virtue of the claimant's resignation. Additional detail about the decision to make the claimant's post redundant was noted, but only as part of the background of the case and not as an allegation in its own right. The claimant made no unfair dismissal claim arising from her decision to resign on 7 October 2019.
2. All of the treatment complained of was said to relate to her pregnancy and/or taking maternity leave and was therefore said to amount to unlawful discrimination under the Equality Act 2010 ('the Act').
3. In its Response the respondent took issue with whether the claims had been brought in time, saying that the last act of alleged discrimination must have taken place by 8 August 2018, the last date that the claimant attended work before taking a combination of sick leave, annual leave and maternity leave. The respondent said that regardless of how the dates were calculated, even on a more generous basis to the claimant, the claims were still well out of time and as such the Tribunal had no jurisdiction to hear them.
4. As for the factual allegations, these were denied and the respondent also denied that any interactions between the claimant and her managers were linked to pregnancy or maternity leave. It said that it had attempted to resolve the grievance raised by the claimant in the latter part of her employment, and that the changes in the business including the potential redundancy of the claimant's post were not linked to pregnancy or maternity, but arose for genuine business reasons.
5. The hearing of these claims took place over three days in February 2020. In the opening discussion the claimant clarified that aside from pregnancy discrimination under section 18 of the Act, she also relied on section 13 to support an allegation

of direct sex discrimination. She said this arose because her job was taken off her and given to a man.

6. During a discussion about time limits, the claimant said that her delay in bringing the claims was linked to post-natal depression, although she had no medical evidence of that. She said that the last act of discrimination took place on 20 December 2018 when the respondent wrote to her about the potential redundancy of her role and other changes in the business. When she submitted her claim on 7 March 2019, the claimant took the view that it was brought in time.
7. The Tribunal was supplied with a bundle of documents, many of which were not referred to during the hearing. Evidence was given by the claimant on her own behalf and the Tribunal agreed to accept a witness statement from a former colleague, Mary Padgett, who did not attend the hearing in person. The main witness for the respondent was Martin Adams, Managing Director, as well as Craig Bodman, Operations Manager. The Tribunal accepted a written statement and some supplementary notes prepared and signed by Andrea Adams, former director and Office Manager, as well as a witness statement of a director from head office, Darren Guy. Both parties were made aware that less weight may be attached to the evidence of the witnesses who were not present in person and whose evidence could not be tested through cross-examination. Given that the claimant made a number of allegations about Mrs Adams' comments and behaviour towards her, the Tribunal was concerned at the fact that Mrs Adams was unable to attend on health grounds. We reminded the claimant that she could nevertheless put a good number of her questions to Mr Adams in his wife's absence, as in most cases he was likely to have relevant evidence to give.

### **List of issues**

8. The parties provided an agreed list of issues at the beginning of the hearing which identified the legal and factual questions to be determined by the Tribunal. Those issues were as follows:

#### **Conduct extending over a period of time / limitation**

- 8.1 With respect to the alleged discriminatory acts (referred to below), do they amount to 'conduct extending over a period' within the meaning of section 123(3) Equality Act 2010 (the 'Act')?
- 8.2 Has the claim with respect to the alleged discriminatory acts (referred to below) or, if applicable, the conduct extending over a period, been filed within the normal time limits?
- 8.3 If not, is it just and equitable to permit the claim(s) to proceed?

#### **Direct discrimination because of sex**

- 8.4 Did the respondent directly discriminate against the claimant because of her sex contrary to section 13 of the Act, as detailed in paragraph 9 below?

**Harassment related to sex**

- 8.5 Did the respondent subject the claimant to unlawful harassment related to sex contrary to section 26(1) of the Act as detailed in paragraph 9 below?

**Discrimination on the grounds of pregnancy / maternity**

- 8.6 Did the respondent treat the claimant unfavourably due to pregnancy or maternity contrary to section 18 of the Act as detailed in paragraph 9 below?
9. Those were the issues of law identified in the list of issues, and the claimant identified a substantial list of 23 factual allegations in the following terms:
- 9.1 On 14.3.18 was the claimant told by both Martin Adams and Andrea Adams that she had spoiled all the business's plans due to her pregnancy?
- 9.2 On 14.3.18 was the claimant advised by Andrea Adams if she wanted to come back part-time, that the managers would have to see what was right for the business? Was the claimant made to feel as though she wouldn't be welcomed back?
- 9.3 On 3.4.18 was it implied by Andrea Adams that she should not be off sick due to morning sickness? When the claimant asked her again about this on 10.4.18, did she say "yes that's right"?
- 9.4 On 10.4.18 did the office manager Andrea Adams say that she was "disgusted" that the claimant had brought up her pregnancy at her annual review?
- 9.5 On 10.4.18 was the claimant informed by Andrea Adams that her being pregnant would not stop the business plans moving forward?
- 9.6 Ongoing – was the claimant constantly called/texted/emailed outside of work hours including at 4.00am in the morning by Andrea Adams and whilst at maternity appointments by Craig Bodman? When advising Martin Adams of this, did he say he would speak to Andrea about it?
- 9.7 On 10.4.18 did the office manager Andrea Adams dismiss the claimant becoming upset during a discussion as it's "just [your] hormones"?
- 9.8 On 13.4.18 was the claimant advised by Martin Adams she wasn't allowed to return to work until her sick note had run out but then allowed this after speaking to HR?
- 9.9 Ongoing – was the claimant avoided by Andrea Adams, Office Manager, until her retirement since the discussion on 10.4.18 where the claimant ended up in tears after trying to talk to her about all these points?

- 9.10 On 17.5.18 was the claimant not informed there would be a new position available and was therefore unable to apply for it? Was the position advertised doing around 50% of the claimant's role and advertised on a permanent basis while the claimant was still employed?
- 9.11 On 13.6.18 was the claimant lied to by Martin Adams when asking about recruiting for the new position and told nobody had been interviewed, then advised about thirty minutes later that an appointment had been made and a male (Craig Bodman) would be starting on 18.6.18? When the claimant asked why Martin hadn't said anything, did he say that he was taken aback as he didn't realise the claimant knew that he had been interviewing?
- 9.12 On 1.6.18 was the claimant asked in a return to work interview with Martin Adams after going to hospital following a bleed in her pregnancy "if this incident would happen again"?
- 9.13 On 19.6.18 was the claimant told by Craig Bodman that at six months pregnant she had to do more work at unsociable hours (on call and starting at 8.00am)? Was this quashed after the claimant said this was against medical advice and it was agreed to start at 8.30am as per her contract?
- 9.14 On 2.7.18 was the claimant told by Craig Bodman that she was not to go out driving/visiting care homes as he would be taking over this part of her job, therefore she was not able to achieve the same results for her job?
- 9.15 Was this around two to three days a week that she was now not visiting homes?
- 9.16 On 25.7.18 when advising of a maternity appointment was the claimant asked "another one?" by Craig Bodman?
- 9.17 On 7.7.18 did the claimant receive a letter from Martin Adams stating that she had wished to start maternity leave on 26.7.18? Had the claimant not asked to start maternity this early and had not put that date in writing?
- 9.18 Ongoing – was the claimant advised by Craig Bodman and Martin Adams that due to her pregnancy she wouldn't have to work in the office alone but was still left alone on occasions?
- 9.19 On 8.8.18 did the claimant receive a call from Craig Bodman after calling him to advise that she wouldn't be in due to my sick note received from my doctor? Was the claimant asked if Craig Bodman could conduct a risk of redundancy meeting over the telephone, which the claimant said no to as she wouldn't be able to have anyone present? Did the claimant ask Mr Bodman whether he should be calling her as she was off sick and was the claimant told his HR department had advised him to call her and ask this?
- 9.20 On 18.8.18 did the claimant receive another letter dated 15.8.18 from Martin Adams stating that she had wished to start holiday leave on 2.9.18?

Had the claimant asked to start maternity on 26.9.18 and was she advised that she around 10.5 days holiday left which did not equate to her leaving on 2.9.18?

- 9.21 On 31.8.18 was the claimant advised by Martin Adams that it may take until after her maternity leave was finished for him to investigate her grievance? Was the claimant advised by Martin Adams she had three options, that either he could look into her grievance himself, someone from head office could look into the grievance or ACAS could look into the grievance?
- 9.22 On 27.11.18 was the claimant advised by Martin Adams by letter that ACAS were “not willing at this point to mediate or carry out an investigation”?
- 9.23 On 20.12.18 did the claimant see the letter stating that her job had been made redundant and as her at risk meeting did not go ahead she was to be offered one of the positions of Resourcer as the role she currently held was to be made redundant? Was the salary on offer £16,000 and less than national minimum wage?
10. The claimant treated the above factual allegations as amounting to unfavourable treatment because of pregnancy or maternity (alternatively direct sex discrimination) and/or unlawful harassment related to sex.

### **Relevant law**

11. The claimant’s claims related to various sections of the Equality Act 2010, relying principally on sections 18 (pregnancy discrimination) and 26 (harassment). The further allegation of direct sex discrimination contrary to section 13 of the Act related to the claimant's allegation that her job was taken from her and given to a man.
12. Section 18 of the Act provides as follows:
- (1) *This section has effect of the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.*
- (2) *A person (A) discriminates against a women if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably –*
- (a) *because of the pregnancy, or*
- (b) *because of illness suffered by her as a result of it.*
- (5) *For the purposes of sub-section (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).*
- (6) *The protected period, in relation to a women’s pregnancy, begins when the pregnancy begins and ends –*

- (a) *if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;*
  - (b) *if she does not have that right, at the end of the period of two weeks beginning with the end of the pregnancy.*
- (7) *Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman insofar as:-*
  - (a) *it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2).*
- 13. Section 18 is concerned with unfavourable treatment of a pregnant woman during the protected period. It has long been established that less favourable treatment of a woman because of her pregnancy, or the consequences of that pregnancy, amounts to direct sex discrimination without the need for a male comparator: Webb v EMO Air Cargo (UK) Limited 1994 ICR770, ECJ. There is therefore an overlap between pregnancy or maternity discrimination and sex discrimination. To avoid this, Section 18(7) says in effect that claims should first be considered under Section 18. Where unfavourable treatment because of the pregnancy or maternity is not covered by that section (for example because it falls outside the protected period), a woman can still bring a claim under section 13 based on less favourable treatment than a comparator, because of her sex. In either case, the Tribunal has to establish the reason why the treatment was given to the claimant.
- 14. The other key aspect of the claim related to alleged harassment under section 26 of the Act which provides as follows:
  - (1) *A person (A) harasses another (B) if –*
    - (a) *A engages in unwanted conduct related to a relevant protected characteristic, and*
    - (b) *The conduct has the purpose or effect of –*
      - (i) *Violating B’s dignity, or*
      - (ii) *Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
  - (4) *The conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account.*
    - (a) *The perception of B;*
    - (b) *The other circumstances of the case;*
    - (c) *Whether it is reasonable for the conduct to have that effect.*
- 15. For the purposes of the claimant's harassment claim, the relevant protected characteristic is sex, as there is no specific provision for pregnancy under section 26. That said, it is clear that if the claimant was harassed for reasons related to her pregnancy, this could properly be treated as harassment related to her sex.

16. Section 136 of the Act is applicable to all the claimant's claims and deals with the burden of proof. It provides that if there are facts from which a Tribunal could decide, in the absence of any other explanation, that the Act has been contravened, then the Tribunal must find that discrimination has occurred. The phrase 'in the absence of any other explanation' is important, because it enables a respondent to show that it did not in fact contravene the Act. In practice this means that a claimant has the burden of proving primary facts from which a Tribunal could conclude that discrimination has occurred. If she does not discharge that burden, then the claim will fail. If on the other hand a claimant provides evidence of facts which on the fact of it show that discrimination has occurred, then the Tribunal will look to the respondent to explain its actions. That explanation may displace the inference of discrimination which might otherwise be drawn. In the context of this question, it can be helpful for the Tribunal to address its mind to 'the reason why' the claimant was treated in a particular way, as part of its assessment of this shifting burden of proof.
17. Under section 123, most claims under the Act must be brought within 3 months of the act of discrimination complained of, otherwise the Tribunal does not have jurisdiction to hear them. The date of a discriminatory act can be a single action, or can be counted from the last date where a course of conduct has extended over a period of time. The three month time limit can in certain circumstances be extended, where a Tribunal considers it is just and equitable to do under section 123(1)(b) of the Act. Tribunals have a broad discretion to make that decision in the interests of justice, with the benefit of evidence to support it.

### **Findings of fact**

18. The claimant began working for the respondent on 9 September 2017 as a Recruitment Manager. The company, Durham Tees Care Limited was part of a franchise and traded as Kare Plus. The franchise was owned and operated by Martin Adams, Managing Director, and his wife Andrea Adams, Office Manager. The respondent business supplied care homes with nursing cover, mainly in the County Durham area. The claimant was responsible for recruiting care homes as clients and for recruiting nurses who would then be supplied to care homes. She was required to build up a customer base and to allocate nurses to homes as well as dealing with any problems arising, for example if someone was unable to turn up to work at short notice. Although in principle the claimant was required under her contract to share the on-call work, in practice Mrs Adams agreed to do the bulk of that. The claimant's basic salary was initially £20,000 plus a performance-related bonus, but as she was unhappy with her salary Mr Adams agreed in November 2019 to roll in the bonus and increase the basic salary to £22,000.
19. Aside from the claimant, the only other employees in the business in 2018 were a part time administrator, Mary Padgett, and an apprentice.
20. There were initially no problems in the claimant's employment although she remained unhappy with her salary and regularly expressed anxiety about her job security. Nevertheless, the claimant told Mr Adams in her initial review meeting on



26 October 2017 that it suited her to work there “at the moment”. This was one of the things Mr Adams wanted to discuss at the next review meeting in March 2018.

21. From January 2018 onwards the respondent was under pressure from the franchisor’s head office to increase sales and turn around the performance of the business, which had been declining. The renewal of the franchise was in doubt.
22. On 14 March 2018, Mr Adams conducted an annual review meeting with the claimant. By this time the company’s financial performance was poor, and Mr and Mrs Adams were intending to make changes to address the need to increase sales and improve profit margins. The directors felt that these changes were vital for the survival of the business. Mr Adams prepared an agenda for the annual review meeting with these considerations in mind. He mentioned the fact that the claimant had asked about her job security and she confirmed that she was happy to stay with the business if her salary expectations were met. In the midst of this discussion about the future plans for the business, the claimant told Mr Adams about her pregnancy. The claimant knew that her news came at a bad time for the business because she was aware of its financial difficulties.
23. The evidence about how Mr Adams reacted to the news was in dispute before the Tribunal. In her diary the claimant noted that Mr Adams “sat back in his chair, put his pen and paper down and put his hands on his head.” She also wrote that he “seemed like he was very unhappy”. In her witness statement the claimant said that he “sat back, sighed, put his head in his hands and said that he may as well cancel the meeting as all his plans had now gone out of the window!”
24. Mr Adams agreed that the first extract from claimant's diary note was accurate, though disputed that he was unhappy or annoyed about future plans. When giving oral evidence, he demonstrated his physical reaction, putting his hands on top of his head as he sat back in the chair. The account of this in Mr Adams’ witness statement was also consistent with the claimant's contemporaneous diary note. Mr Adams referred to the fact that he might need to take advice. On being prompted by the claimant, he offered his congratulations on her pregnancy. The claimant then took it upon herself to leave the meeting and call Mrs Adams into the room. Her main purpose was to announce the pregnancy news in the hope and expectation that she would get a congratulatory response.
25. In her witness statement the claimant said that Mrs Adams’ “face fell” in response to the news, though she quickly composed herself and offered congratulations. In her diary the claimant recorded Mrs Adams as saying the news had “changed all their plans” and they would have to redo them. The claimant wrote that this “made me feel like I had spoilt everything”, though this was not what Mr or Mrs Adams had suggested. Mr Adams felt that the review meeting had been disrupted by the claimant’s decision to bring Mrs Adams into it. He proposed to pause the review and reconvene after taking advice.
26. Like her husband, Mrs Adams was taken by surprise on hearing the news and on being told by the claimant that the review meeting had been suspended as a result. She was surprised to be called into the office in this way by the claimant

and unprepared to answer her questions about maternity cover and part-time working.

27. The Tribunal was satisfied that Mr Adams was giving a truthful account of how he reacted, and after considering the evidence as a whole we concluded that the claimant's version in her evidence was an embellishment of what happened. Putting his head in his hands, and sighing, both carry negative connotations whereas the agreed version of events (as reflected in the diary) is consistent with Mr Adams simply being surprised at the news and pausing for thought. He and Mrs Adams referred to the fact that the plans for the business would need to be changed, but in the context of setting objectives for the next 6 months this was unsurprising.
28. Other matters discussed at this meeting were raised by the claimant. She mentioned driving and this prompted Mr Adams to check the insurance documentation on file. He found that it was out of date. The claimant also asked about job security and maternity cover, and although she said it was Mrs Adams who raised the subject of part-time working, this was in fact mentioned by the claimant. Neither Mr nor Mrs Adams disputed that their response was that this would depend on business needs at the time, and they said they would consider this. The claimant's diary note recorded that: "This made me feel like ... If I didn't come back full time I wouldn't have a job".
29. On 5 April Mr Adams met with Darren Guy, an Operations Manager from the franchisor's head office. He asked to see significant changes in the business to turn around its poor financial performance. It was clear to Mr Adams that changes were necessary to secure the future of the business and ensure that the franchise was renewed. At that time the survival of the business was felt to be at stake. The owners also needed to plan ahead for their retirement within the next four to five years. He drew up a document setting out various options as a result of his conversation with Mr Guy.
30. At this time the respondent was continuing to experience trading losses and a reduction in turnover despite the claimant's efforts to drum up new business. In compiling his document, Mr Adams saw the options as including: the sale or closure of the franchise; bringing in someone with sector experience (which he, Mrs Adams and the claimant all lacked); employing a senior manager with recruitment experience; or promoting the claimant to that position. He felt that appointing a new senior manager had the added benefit that this would provide succession planning. The option of promoting the claimant was never taken seriously because she lacked the necessary business skills and experience in the healthcare sector. Mr Adams also believed that the franchisor was unlikely to agree to her promotion. Another factor in the respondent's mind at the time was her impending maternity leave. By then the claimant had been unable to reverse the loss of profits and reduction in turnover, and had told Mr Adams that she had run out of ideas to improve sales.
31. Three weeks later, at a routine weekly meeting with Mr Adams on 9 April, the claimant told him how upset she had been about the reaction to her pregnancy news on 14 March. She noted in her diary that Mrs Adams had told her that

morning sickness should not affect what she was doing. The claimant wrote that she “knew” this meant it should not prevent her from coming into work. The claimant told Mr Adams that she did not want to be discriminated against if she was off work due to morning sickness and Mr Adams reassured her that that would not happen.

32. In her written evidence to the Tribunal Mrs Adams denied suggesting that the claimant could not go off sick due to morning sickness. She also denied saying she was “disgusted” that the pregnancy had been announced at an annual review meeting. In his witness statement Mr Adams denied that the morning sickness comment was discussed on 9 April, and it did not appear in the respondent’s note of the meeting. He felt it was odd that the claimant chose this meeting to tell him how upset she had been on 14 March, as they had had four other meetings in the meantime.
33. In a diary entry about the events of 9 April, written the following day, the claimant recorded her feelings about what had happened. She wrote that after her meeting with Mr Adams that day he “must have gone home and told Andrea what I had said and she must have been fuming (which she told me today she was)”.
34. The diary entry noted a handful of text messages and phone calls between the claimant and Mrs Adams on the evening of 9 April. These were outside normal working hours which were at that time 9am to 5pm. The claimant received a text at 17:55 while she was at the dentist and another at 19:44 asking which care homes she planned to visit over the next two days. She was supposed to have given Mrs Adams a journey plan in the office that day. At 19:52 Mrs Adams texted again, having had no reply from the claimant who was visiting family. Following this the claimant phoned Mrs Adams at 20:55 when they discussed the journey plan and changes Mrs Adams wished to make to the claimant’s days in the office. The claimant then emailed Mrs Adams at 21:05 questioning her decision to change the working pattern, and sent a follow up email at 22:35. On the morning of 10 April the claimant noted that she had had a text message from Mrs Adams at 8:12am.
35. These four text messages and this phone call were the only examples noted in any of the claimant’s diaries about out of hours contact. Mr Adams’ later search of the phone records was consistent with her account of the contact on 9 April, but he found no sign that she was being contacted out of hours on a regular basis. In her evidence Mrs Adams acknowledged that she occasionally sent messages for the claimant to pick up at the start of her working day, as a way of keeping her up to date with the on call queries. She stopped doing this after Mr Adams mentioned it to her.
36. In discussion with her partner about the exchange of messages with Mrs Adams on the evening of 9 April, the claimant accepted his view that Mrs Adams was “the boss”, but wrote that it was “only then that [he] pointed out that Mr Adams would have mentioned our conversation and that she would have been pissed”.
37. The following day, 10 April 2018, a difficult meeting took place between the claimant and Mrs Adams. The subject-matter of the discussion was disputed, but

the Tribunal felt able to make its findings of fact after weighing up the claimant's written and oral evidence and Mrs Adams' written evidence, as well as having the benefit of considering the evidence as a whole.

38. On the morning of 10 April the claimant went into the office where Mrs Adams was already dealing with a member of the team. The claimant made clear that she wished to meet with Mrs Adams immediately, and so she passed the team member to a colleague and spoke with the claimant in a meeting room. Mrs Adams described the claimant's manner as aggressive and agitated, which the Tribunal accepts was the case. The tone and content of the meeting was, even by the claimant's own diary entries, somewhat hostile on her part and she went into the meeting with a number of complaints and challenges to Mrs Adams' authority.
39. As noted in her diary, the claimant began by saying how upset she had felt about the reaction to her pregnancy, which "was supposed to be the happiest time of my life". Mrs Adams' witness statement recorded this comment in more or less the same terms, saying that the claimant "demanded" to know why she was not interested in her pregnancy because it was "the happiest time of her life". She said this was repeated several times during the meeting. Mrs Adams replied that she had "no problems with [her] pregnancy whatsoever", which again the claimant recorded in her diary. Mrs Adams also pointed out that she had congratulated the claimant on hearing the news and beyond that, it was a private matter.
40. Mrs Adams agreed that she said the claimant should get on with the job as normal unless there was a reason why not. This may account for the claimant believing that morning sickness had been discussed in the context of her not being allowed sick leave for this reason. The Tribunal accepted that the more neutral language used by Mrs Adams more likely reflected what was actually said, and was not persuaded that she told the claimant she should not be off work because of morning sickness.
41. The note in the claimant's diary about Mrs Adams being "fuming" about what was said in the meeting with Mr Adams on 9 April was an assumption on the claimant's part and undoubtedly contributed to the hostile tone of the meeting.
42. There was a discussion about when the claimant was needed to be office-based rather than out on visits to care homes, to help manage busy times in the office. This had been the subject of their phone call the previous evening. The claimant was unhappy about the proposed changes. Her diary note showed that she challenged Mrs Adams on a number of issues, including this one, and the fact that the managers had left her working alone in the office on occasions when they were away for a long weekend. The claimant told Mrs Adams she thought she wanted to check on her whereabouts, because she had been suspicious about how the claimant's predecessor had spent her time. The claimant felt that she did not dare to ring in sick because of how the nurses engaged by the business were treated.
43. They discussed the need for maternity cover and Mrs Adams told the claimant she was happy with her work, as also noted in her diary. Mrs Adams reassured

the claimant that she was happy with her work and had told her at Christmas that her job was safe.

44. In her evidence Mrs Adams said the claimant accused her of not trusting her and said "you want rid of me". Mrs Adams replied that they were not looking to make her redundant. She said the claimant accused her of checking up on her, and told Mrs Adams that she would not be micro-managed.
45. The claimant wrote in her diary for that day that various little things made her "feel like she wasn't wanted in the office". This was consistent with Mrs Adams' evidence about wanting rid of her. She made a note that Mrs Adams had been talking to Mrs Padgett about hiring new staff, and to the claimant it "seemed as though" Mrs Adams was wanting to bring in new staff to replace the old ones.
46. The claimant told Mrs Adams that she had heard that Mr Adams might limit his involvement in the business for health reasons. According to the claimant's diary, Mrs Adams then "flew off the handle", expressing her disappointment that the claimant had discussed this issue with Mrs Padgett.
47. The above findings reflect the degree of consensus between the claimant's account as noted in her diary, and the written evidence of Mrs Adams. The Tribunal accepts that the above evidence broadly reflects the gist of the comments made by both the claimant and Mrs Adams, given the similarities between their respective accounts.
48. Other aspects of the discussion were not agreed. For example, the claimant recorded Mrs Adams as saying she was "disgusted" that the subject of the pregnancy was raised in the middle of the annual review, which Mrs Adams denied. She did, however, admit asking the claimant why she had chosen to announce her pregnancy in an annual review meeting. Again, the Tribunal accepts the more neutral language used by Mrs Adams as being closer to the truth.
49. Although the claimant's witness statement drew substantially on her diary notes, she added in her evidence the detail that Mrs Adams' voice was raised during this discussion. That may well have been the case, but the Tribunal does not doubt that it was an emotionally charged discussion on both sides.
50. The claimant was upset and crying during part of the meeting and noted in her diary that this was what prompted Mrs Adams saying it was "just your hormones". This was denied by Mrs Adams, who said she had not referred to hormones at any time, though she thought it might have come into some other baby talk in the office. On one such occasion Mrs Adams had offered to knit for the baby.
51. Mrs Adams apologised to the claimant several times during the meeting. She too was upset and tearful. She felt bullied and intimidated by the claimant, and was particularly upset to be told that Mrs Padgett agreed that the claimant was being treated badly. Mrs Adams felt this was a betrayal by Mrs Padgett, and felt undermined by the claimant. She felt the claimant had unjustly accused her of things she had not done. She brought the meeting to an end because she felt it

was going round in circles. She left the meeting and went home early in a distressed state. The claimant described this as a “storming out” of the office.

52. On leaving the meeting room the claimant told Mrs Padgett what had happened. She then left work without reporting her absence to Mr Adams. The claimant later noted in her diary that when seeing her doctor she had “explained everything right back to Xmas” when “plans had changed” and Mrs Adams had been angry about providing on call cover over the holiday period.
53. Mr Adams was not present at the meeting but had obviously heard about it from his wife. He later said that the claimant had been trying to provoke a reaction from Mrs Adams on 10 April.
54. After this meeting Mrs Adams contacted her doctor and worked mainly from home for a few weeks on health grounds. She had already been experiencing issues with her mental health and reported being impacted by what she saw as the claimant’s negative and aggressive behaviour. For these reasons, Mrs Adams limited her time in the office and had little to do with the claimant or other staff after this date.
55. The claimant was signed off sick after the 10 April meeting and her fit note said she would be unfit to work until 22 April. The claimant emailed Mr Adams saying that she would “probably not be in” for the rest of that week and “to ask Andrea why”. Mr Adams replied immediately, not taking any issue with the claimant’s sudden departure from the office or the manner in which she had reported in sick, but instead inviting her to an informal meeting on 13 April to discuss and resolve the concerns she had raised. Although this meeting turned out to have some significance, it was barely mentioned in the claimant’s diary. She simply noted a discussion about her returning to work before the expiry of her fit note. Mr Adams’ note of this meeting was more detailed. He recorded that the discussion between the claimant and his wife on 10 April had turned into a heated exchange, leading to both of them walking out of the office. The claimant was invited to explain why she had done this, as she had not notified Mr Adams at the time.
56. The claimant told Mr Adams she had had messages the night before from Mrs Adams, who was asking which care homes she was planning to visit the next day. She had been too busy during the day to provide Mrs Adams with a journey plan.
57. The respondent's note recorded that the claimant was still upset at the reaction to her pregnancy announcement. She reported Mrs Adams as having been “disgusted” that it had been raised during an annual review. Mr Adams was then accused of having “thrown his arms in the air” and “thrown his pen on the desk”, saying they would have to alter their plans. Mr Adams admitted to the claimant that he had been taken aback by the news, and had stopped the meeting to rethink the long term goals for the business.
58. The claimant also reported that Mrs Adams had said morning sickness should not affect what she was doing. She relayed her comment to Mrs Adams about feeling she was being pushed out of her job, and made to feel her job was at risk since the pregnancy announcement, and said Mrs Adams had replied that this was

down to her hormones. This contradicted the claimant's diary note, which attributed the remark about hormones to the claimant's tears.

59. Mr Adams apologised if that was how the claimant was feeling and said no malice had been intended. He had already assured her that her job was safe. The claimant said she had heard from a colleague that the respondent was employing two sales and recruitment people and Mr Adams said he was unaware of that. The question of the claimant driving was mentioned, and Mr Adams said this was part of a risk assessment which was still to be carried out.
60. Mr Adams did not berate the claimant for leaving work early on 10 April without an explanation, but instead adopted a conciliatory approach. The claimant said that if the issues had blown over she would happily stay on at work that day, but she was advised not to pending HR advice.
61. Mr Adams made the claimant aware that Mrs Adams had had some issues with her, feeling that she was passing responsibilities to her and seeking assurances that she was doing her job correctly. The claimant had also been dealing with personal phone calls and texts while at work, which Mrs Adams had raised with her as she felt it was disruptive.
62. When asked what outcome she wanted from this meeting, the claimant said it was for things to be normal in the future. She did not want Mr Adams to discuss the content of the meeting with Mrs Adams because she did not want to make the situation worse, and so Mr Adams agreed not to go into any details with his wife. This was the agreed outcome from the meeting.
63. The claimant then returned to work early, on 14 April, after the respondent had taken HR advice. Mrs Adams continued to stay away from the office, especially when the claimant was working. She was extremely upset about some of the things the claimant had accused her of, and these allegations had an adverse impact on Mrs Adams' mental health.
64. On 30 April Mrs Adams came into the office but immediately on arrival she did not feel well enough to stay and left without speaking to her colleagues. On their return from a short holiday on 14 May, Mr Adams made the claimant aware that Mrs Adams may not be coming back to work and had expressed a wish to retire. She later resigned with effect from 1 June on the grounds of her poor health, in effect retiring early from the business.
65. Mr Adams had already spoken to Mr Guy in early May, when the decision was made to recruit an experienced Operations Manager from the healthcare industry. This was necessary in order to turn the performance of the business around, and would enable Mr and Mrs Adams to step back from the business. The claimant's lack of management experience or background in the healthcare sector meant she was not a suitable candidate for the role, which was different from hers and operated at a much more senior level. Mr Adams did not therefore tell the claimant about the vacancy. He did not tell her that than the new appointee would be carrying out half of her role, as this was not the case. At this stage the intention was to maintain the claimant's role alongside the Operations Manager's.

66. Although the claimant became aware of the vacancy, in her evidence she gave different explanations for how that came about. In a diary entry dated 17 May she noted that she was phoned by a candidate interested in the the job, who then emailed her his CV. In her witness statement the claimant said she found out through a phone call from Mrs Padgett that same day.
67. Once the claimant knew about the vacancy she decided “not to pursue this at this point due to [her] pregnancy”. This was her personal choice, though she later alleged that the respondent had not given her an opportunity to apply.
68. The claimant made other allegations about the circumstances surrounding the interview for the vacancy, accusing Mr Adams of lying about whether anybody was being interviewed. In fact, the claimant’s enquiry was about whether the respondent was interviewing the candidate whose CV she had passed on. Mr Adams replied that they were not interviewing him due to his background and experience, but they were waiting to hear from head office about the terms that would be offered to Craig Bodman, the successful candidate. He had been interviewed by Darren Guy with Mr and Mrs Adams present to answer questions about the business.
69. On 1 June, following a short spell of sick leave caused by a bleed in the pregnancy, the claimant attended a return to work interview with Mr Adams. She later complained that he asked whether the sickness absence was going to happen again, which offended her. Mr Adams did not dispute asking the question, though he said he was simply following the standard form used by the respondent. He said he made it clear to the claimant that he did not expect her to be able to answer the question.
70. He and the claimant went on to discuss the financial performance of the business, which had been incurring losses over the last six months. Mr Adams told the claimant that he had terminated the employment of the apprentice that day as a cost-cutting measure, and that more cost-cutting may have to follow. He was open with the claimant and made her aware that there had been discussions with head office about a new sales and recruitment focus for the business, to secure its future. He agreed that he would keep the claimant informed in their regular weekly meetings, and asked her to concentrate on generating sales.
71. Mr Adams agreed with the claimant's view that Mrs Adams had not been responding to greetings and that there was a bad atmosphere in the office. This was not confined to the claimant, as Mrs Adams had not replied to the apprentice when she said goodbye after being dismissed.
72. On around 13 June Mr Adams told the claimant that he and his wife were taking a step back from the business and that Mr Bodman was joining as Operations Manager, coming with a background in recruitment in the healthcare sector. Mr Bodman took up his position on 18 June and arranged a meeting with the claimant the following day. He invited her to contribute her thoughts on the business so that he could take them into account in the review he was tasked with carrying out. The claimant described her role, and told Mr Bodman that there had



been a lot of unrest lately between her and Mrs Adams, but that most of the issues between had been resolved.

73. There was a discussion about the claimant participating in the on call rota and she was asked if she would start work at 8am, with an earlier finish. The claimant was unhappy about this. Although her contract required her to start work at 8.30am, in practice she had worked from 9am-5pm. She later compromised by agreeing to work from 8.30am to 4.30pm. As she was also unhappy about covering on call work, Mr Bodman agreed she was not required to do this while pregnant.
74. The intention was to have the claimant based in the office at a busy time for the business, because 8am was the usual shift change overtime in the industry and it was usual to start work at that time, for example to help if nurses had not turned up to work at care homes. Mr Bodman also wanted the claimant to be in the office more often and to spend less time driving to clients. Part of his reasoning was that her car insurance paperwork had not been updated to show that she was covered for business driving. At around this time the claimant's partner picked up their new car and they made the decision not to insure the claimant for business travel. Other documents were also missing from the file, namely agreements on company mobile phone and laptop use. These were needed for insurance purposes, especially if the claimant was taking the equipment away from the office. The claimant told Mr Bodman that it was pointless signing any of this paperwork at this stage, because she was due to go on maternity leave. Mr Bodman's response was that she could not then make calls on care homes and would have to return the laptop and phone to the office rather than keeping them away from of the office.
75. In the following weeks Mr Bodman found the claimant difficult to work with, seeming resentful and being generally uncooperative.
76. Mr Adams wrote to the claimant on 2 July about the date he understood her maternity leave would begin. This formed the basis of one of the claimant's allegations, because she was unhappy that he made a mistake with the date. Mr Adams' understanding came from a conversation in the office when he overheard the claimant telling Mrs Padgett that she might not be back at work after a summer holiday. As soon as the claimant clarified when she in fact wanted to start her maternity leave, Mr Adams corrected the date.
77. On 27 July the claimant had a conversation with Mr Bodman when the subject of her ante-natal appointments came up. The claimant had attended such an appointment that morning and mentioned she had another one coming up, which Mr Bodman clarified was not a problem. In her diary note the claimant noted Mr Bodman as saying "another one!!!". In his oral evidence Mr Bodman explained that he had made such a comment but not in the manner suggested by the claimant. He had merely expressed spontaneous surprise that another appointment was scheduled so soon after the one she had just attended.
78. On 1 August the claimant attended a meeting with Mr Adams to discuss the fact that her role was by then at risk of redundancy. Mr Adams explained that a significant restructure was necessary in order to achieve savings and return the

business to profitability and ensure the renewal of the franchise. He said the first part of the restructure had been Mr Bodman's appointment, and a further review had now been carried out. As a result, it was felt that the position of Office Manager (which had just been vacated by Mrs Adams' retirement) was at risk of redundancy, as was the claimant's own role. Mr Adams said he was planning to reduce his hours to three days a week from 6 August, and Mr Bodman would manage the business day to day. He confirmed that Mrs Adams was no longer employed after working her notice to the end of July. Mary Padgett was due to leave the respondent in August. The intention was to hire two new positions as Resourcers and have one person handling administration. The claimant was also shown some figures to support the redundancy rationale.

79. The claimant was not required to respond to the proposals at this meeting but was offered a consultation meeting with Mr Bodman on 8 August. At this initial meeting she told Mr Adams that she felt he was replacing her with Mr Bodman and said that, to her it looked like the respondent was "just getting rid of her". Mr Adams disputed this. It was agreed that the claimant would await the consultation meeting before any other steps were taken.
80. On 7 August the claimant emailed the respondent to say she wished to raise a grievance. She did not provide any detail other than referring to pregnancy discrimination. The next day, the day of the redundancy consultation meeting, the claimant called in sick. On the advice of the respondent's HR advisors, Mr Bodman phoned the claimant to ask whether she wished to conduct the consultation meeting by telephone. The claimant said she did not, because she would have nobody with her, and Mr Bodman accepted that. The claimant told him that she did not wish to be called again while she was off work.
81. On 15 August Mr Adams wrote to the claimant acknowledging her grievance and asking if she could provide details so that it could be investigated. At that time Mr Adams was planning to conduct the investigation himself. He noted that the claimant had requested not to have contact from the company while off work. He also made the claimant aware that the proposed restructuring and redundancy would be put on hold pending resolution of the grievance.
82. By then the claimant's absence on maternity leave was imminent, as she was taking holiday immediately before it, from 2 September. Mr Adams proposed that the grievance could be investigated while the claimant was on leave, but suggested it might be preferable to have the grievance meeting after the birth of the claimant's child.
83. In her reply sent shortly afterwards, the claimant took issue with the behaviour of all her managers, Mr Adams, Mrs Adams and Mr Bodman. She said she felt that her post had been put at risk because of the pregnancy and that her role had been advertised and 50% of it given to Mr Bodman. She set out a sequence of events which had taken place since 14 March up until 18 August, the date she received the 15 August letter. Those events broadly match the factual allegations identified for this hearing. The claimant's reply made no comment on the proposal about the time frame for the grievance or the procedure to be followed.

84. On 23 August Mr Adams wrote again saying that the investigation might take longer than hoped for. Given that the complaints were about all three managers, Mr Adams felt he should not be the person to investigate it. In a message dated 31 August he told the claimant he was taking advice about how to handle the grievance. The claimant wrote on 2 September challenging the proposed time frame.
85. The claimant started her maternity leave period effectively from 2 September 2018 by using some accrued holiday, and her child was born on 28 September.
86. On 12 September Mr Adams wrote to the claimant again, setting out the options as he saw them. He provided a detailed explanation for why he was concerned about who should investigate the grievance, and said he was looking into the possibility of an external mediator. Mr Adams identified options which included carrying out the investigation himself despite his direct involvement, asking head office to identify someone to deal with it, or using the services of ACAS.
87. On 29 September the claimant wrote back quoting the grievance procedure, which provided that there should be an investigation and then a meeting within a 7 day period. She complained that the proposed timetable was outside the 7 days and she did not accept that there should be any delay due to her maternity leave.
88. On 3 October the claimant wrote again to say that she would be in touch after taking advice, as her baby had been born earlier than expected. On 12 November the claimant emailed the respondent to say she would prefer the option of using ACAS. The respondent replied on 27 November to say that ACAS were unable to help. That was the last communication from the claimant about the handling of the grievance. By this time she was contemplating bringing a claim and in November 2018 she contacted ACAS to initiate early conciliation.
89. On 20 December 2018 Mr Adams wrote a formal letter to the claimant saying that that he had had the benefit of advice. He reminded the claimant of the changes in the business which had been recommended following Mr Bodman's review, and why those were necessary in order to secure the future of the business. He noted that they had been unable to go ahead with the planned discussion about the future of the business and the restructure. Had they done so, the respondent's intention was to offer the claimant a position as a Resourcer on a salary of £16,000, £6,000 less than her current salary. He asked the claimant to consider this as an offer as a way of dealing with the proposed restructuring and in order to resolve her grievances. He said that if the claimant preferred not to accept the offer but instead to proceed with the grievance, he would ask head office to appoint someone to deal with it.
90. The claimant did not reply to this proposal, and the respondent took no further steps in respect of it.
91. Having initiated early conciliation in November 2018, the ACAS certificate was issued on 3 February 2019, and the claimant's application to the Tribunal followed on 7 March 2019 during her maternity leave.

92. During the claimant's maternity leave no Keeping in Touch days were arranged and she did not attend work. In anticipation of returning to work the claimant attended the office on Friday 27 September 2019 and met with Mr Bodman. She began by asking what was happening with the proposed redundancy, and Mr Bodman said he had wanted the meeting to be simply about welcoming her back into the business, not a discussion about her grievances.
93. The claimant then told Mr Bodman that she felt "intimidated", saying that the office was "full of men", with no female staff. During her absence the respondent had taken on a new male apprentice and another male employee. Mrs Padgett was no longer working there. The claimant did not explain why she felt this was intimidating, but repeated the point several times.
94. Mr Bodman clarified that the claimant's post was no longer at risk of redundancy, as the business had shown some improvements. He confirmed that she would be returning to work on the same salary and in the same role. At that point the claimant said she already had another job offer and intended to resign because she did not feel able to accept the £16,000 salary. She requested holiday from that day and Mr Bodman agreed.
95. By an email on 7 October the claimant gave two weeks' notice to terminate her employment because she had accepted the other job. She referred to the confusion about her position as she had not yet received the promised written confirmation that her post was not being made redundant. Mr Bodman replied the same day apologising for not being in touch as he had been away from the business. He confirmed that there was no redundancy and asked the claimant to reconsider her resignation. The claimant replied the following day, saying she was not satisfied that a redundancy would not arise in the future, and she was not willing to withdraw her notice. In a further letter dated 10 October the respondent accepted the claimant's resignation and her employment came to an end on 21 October 2019.

### **Conclusions**

96. At the outset of this hearing the claimant confirmed that the core events she relied on were those set out in the case management orders and summarised in the list of issues above. She also wished to rely on the events surrounding her return to work from maternity leave, though these did not form part of her pleaded case. When summing up, the Tribunal invited the claimant to present her arguments as to why all these events amounted to pregnancy discrimination or harassment. She said the treatment she received led to her experiencing stress, giving the example of her role being at risk of redundancy. She felt that her pregnancy compromised the respondent's plans to revive their failing franchise, and for that reason they proposed to cut her salary. She said that the events as a whole amounted to a prolonged series of discriminatory treatment between 14 March 2018 and 27 September 2019 when she returned briefly to work. Together, these events were a sustained campaign of discrimination, which caused stress during her pregnancy. Those were the points relied on by the claimant in her summing up.

97. On behalf of the respondent Mr Clarke referred to the letter of 20 December 2018 as being the key act which the claimant relied on in pursuing her discrimination claim. He said that this clearly did not relate to pregnancy or discrimination in any way. The alleged treatment took place between March and August 2018, including the claimant's grievance raised on 7 August, and the claims were therefore all out of time due to the delay before issuing the claim in March 2019.
98. Mr Clark submitted that by March 2018 the respondent was in financial difficulties and Mr Adams met the claimant at her annual review on 14 March to discuss the future. Some changes were already in contemplation, with Mr Adams intending to become more strategic in his role. The claimant then announced her pregnancy. After this Mrs Adams chose to retire because of ill-health. It was necessary for the respondent to fill the gap during the claimant's maternity leave and she was consulted about developments. The new Operations Manager was a strategic appointment to ensure the survival of the business and an increase in its profits. He said the developments that took place in the business were the reason for the treatment, and not pregnancy.
99. The claimant made numerous allegations against Mr Adams and Mrs Adams, and some against Mr Bodman. We did not have the benefit of hearing from Mrs Adams in person. We accepted that the reason she was unable to attend the hearing was due to her mental health. In her written statements Mrs Adams denied the allegations, or at least denied that comments were made in the manner described by the claimant.
100. In making our findings of fact we had to balance carefully our assessment of the claimant's credibility against the written information provided by Mrs Adams, and we had to weigh the evidence as a whole. We reminded ourselves that Mrs Adams' evidence had not been tested on cross-examination. The oral evidence of the claimant, Mr Adams and Mr Bodman was assessed and we reached a view on the credibility of each allegation after considering the evidence as a whole. We were satisfied that Mr Adams was a reliable witness, as was Mr Bodman who gave his evidence with confidence. There were key areas of dispute between the claimant's account and that of the respondent's witnesses, yet there was a degree of consistency between what the latter said and the notes made by the claimant in her contemporaneous diary.
101. Where there were differences between the accounts of various incidents and conversations, we preferred the respondent's evidence over the claimant's. Our reasoning in given instances is summarised in the relevant findings of fact, and in our conclusions below on the particular allegations, but looking at the evidence as a whole we concluded that the claimant was less reliable in respect of the detail of her accounts. She had a tendency to read into situations what she wanted to see, relying on some preconceived ideas about what the respondent's managers were thinking. We also concluded that the claimant often exaggerated (consciously or otherwise) her perception of what had happened, borne of her generally negative attitude towards the business and its managers.
102. One aspect of the evidence which damaged the claimant's credibility related to her allegations about the vacancy for the post of Operations Manager. In her

application to the Tribunal the claimant alleged that she was not made aware of the vacancy and was therefore unable to apply. In her witness statement she then made plain that she had not been interested in applying for the position, having been made aware of it by the administrator, thus undermining her own argument considerably. The Tribunal was also struck by the fact that it transpired only during her cross-examination of Mr Adams that the claimant had known about the recruitment exercise as a result of direct contact from a prospective candidate. All of this contradicted the claimant's allegation that she was denied an opportunity to apply for a job which was 50% her own.

103. Another aspect of the evidence which did not reflect well on the claimant's credibility were the comments she made to Mr Bodman at the return to work meeting on 27 September 2019 about feeling "intimidated" because the office was "full of men". This appears to have been based on nothing, as she had had no contact with the respondent nor worked with the male employees in question. The comments gave the appearance of being made in order to make a point.
104. We took into account the application of the burden of proof under section 139 of the Act, and were not satisfied that the claimant provided us with evidence which on balance proved that she had been treated in such a way as to amount to unlawful discrimination. In any event, we concluded that the evidence of the respondent's actions ('the reason why') showed that there were non-discriminatory explanations for the treatment.
105. The Tribunal was tasked with deciding whether these claims were brought in time after hearing all the evidence on the merits. Having done so, we concluded that the claims were brought after the three month time limit under section 123 of the Act. In reaching this view we considered the chronology of events relied on, principally from 14 March 2018 to late September 2018. We also considered what relevance the letter of 20 December 2018 had on the alleged acts of discrimination.
106. Under section 123(3) of the Act, the date when an act of discrimination took place can be treated as a single event or as the last date in a series of actions which amount to a course of conduct or series of continuing acts. In her witness statement the claimant alleged that she had been the subject of a "prolonged insidious series of discriminatory treatment" over a period of months, especially by Mrs Adams, and said this had caused several stress absences. She described it as a "sustained campaign of discrimination". In fact, the claimant was off sick on only three occasions, one of which arose because of a bleed in her pregnancy. The first sickness absence was for three days on 10 April 2018, after her difficult meeting with Mrs Adams. By Friday 13 April the claimant was keen to return to work and did so on 16 April. The pregnancy-related absence was for three days from 29 May 2018, by which time the claimant was no longer having any particular contact with Mrs Adams. The 3rd and final absence began on 8 August 2018 after the meeting to discuss possible redundancy. Only the first of these absences had any connection with the alleged harassment on the part of Mrs Adams.
107. Putting aside for the moment our conclusions on the merits of the allegations, we do not agree that the claimant can treat everything that happened to her at work

from 14 March 2018 as a single course of conduct. The assertion of a sustained campaign of discrimination is an exaggeration of what happened, and we conclude that there was no such course of conduct. The meetings in March and April 2018 could be said to have some commonality and flowed from one into another, but those discussions ended in a resolution by 13 April 2018. The claimant acknowledged as much when asking Mr Adams to return to work early as things had “blown over”. She also told Mr Bodman on 19 June that the situation with Mrs Adams was mostly resolved.

108. The other interactions between the claimant and Mrs Adams had also ended well before the claimant contacted ACAS in November 2018. These interactions included, for example, the comment about morning sickness, the out of hours contact and the general ignoring. After 10 April Mrs Adams seldom came into the office and had barely any contact with the claimant. In June 2018 Mrs Adams resigned and by the end of July her employment had formally ended, therefore bringing to an end any course of conduct on her part.
109. A number of the allegations related to day to day management actions, such as changes to the claimant's office-based days and her driving duties. If that could be said to be a continuing course of conduct, it had come to an end by 8 August 2018 at the latest, as the claimant did not attend work again after that date. The handling of the grievance was a feature of the contact between the parties for around four months between 7 August and 27 November 2018, by which time the claimant had already contacted ACAS to initiate Early Conciliation.
110. The allegations about the redundancy agenda were different in nature, reflecting the claimant's view that her pregnancy had led the respondent to want to get rid of her. On the claimant's case this decision had been made by 1 August 2018 when she was told about the proposal. It had ended by the time of Mr Adams' letter of 15 August saying that the restructure would be put on hold pending resolution of the grievance. The Tribunal does not consider the respondent's later letter of 20 December 2018 to be a continuation of that decision, but it was a fresh act putting forward a proposal to achieve a resolution of various issues.
111. We were not persuaded that the events complained of constituted a single course of conduct as they formed separate strands within the claimant's complaints. Having concluded that the claims were brought out of time, we then considered whether there was any evidence to support an extension of time on just and equitable grounds. We found nothing in the claimant's evidence on which we might exercise our discretion. She had no particular explanation for the delay in bringing the claim, other than a bare assertion of post-natal depression after the birth of her child on 28 September 2018. We noted that the claimant was able to maintain correspondence with the respondent until as late as November 2018 on the subject of the grievance, and nothing prevented her from contacting ACAS about a potential claim that same month. There was no explanation at all for the lack of action in the months before that.
112. If we are wrong to conclude that the claims were brought out of time, such that we do not have jurisdiction to determine them, we are nevertheless satisfied for the

reasons set out in these conclusions that the claimant's allegations would fail on their merits. Our further conclusions on the facts summarise our reasoning.

113. In her short time with the respondent the claimant expressed dissatisfaction with her salary and anxiety about her job security on several occasions. This was understandable given the small size of the business and the fact that its financial performance was declining from January 2018 onwards. The claimant was aware of the position from before her pregnancy, and even she concluded that the timing was difficult for the business. Having previously been reassured that her job was secure, redundancy was not in the respondent's contemplation at the time of the annual review meeting on 14 March.
114. The first of the claimant's allegations relate to the meeting of 14 March 2018. Although the evidence about the meeting was in dispute, the Tribunal found that the respondent's evidence reflected what is likely to have been said. This was that the directors would have to look again at their plans because the pregnancy had changed things, but this was not expressed in the way that the claimant interpreted it. Having accepted the respondent's account of this meeting over the claimant's (where they differ), we conclude that the managers did not say the pregnancy had spoiled their plans, but only that their plans would have to be revisited. That response was only to be expected, especially in such a small business, and it was not unfavourable treatment.
115. The fact that the claimant immediately raised the subject of maternity cover and returning to work part-time meant the respondent had no time to consider the options at this early stage. In any case, when Mrs Adams responded by saying they would need to see what was right for the business, she did so properly and this was not unfavourable treatment. Her response reflected the claimant's legal right to request flexible working, something which she was not automatically entitled to have granted. The second part of this allegation was expressed as the claimant being made to feel as if she would not be welcomed back, but that was a perception in her mind only, and not warranted by the reply from her managers. We conclude that the claimant's interpretation of what was said on 14 March arose from her disappointment with the reaction to her news. Her repeated insistence at the meetings on 9 and 10 April that this was the happiest time of her life reinforce our view that the claimant had hoped for a more positive and congratulatory response. If that expectation was not met, it was not an act of discrimination.
116. The claimant raised no particular allegation about the meeting of 9 April, though she did complain about being "constantly called/texted/emailed outside of work hours including at 4.00am by Andrea Adams and whilst at maternity appointments by Craig Bodman" in the period between March and May 2018. We have found that the only such contact was on the evening of 9 April, and we conclude that this allegation is without merit. On that day the claimant had left the office without providing information to Mrs Adams about her plans for the next day, visiting care homes. It was not unreasonable for the respondent to follow this up with a quick text message, and Mrs Adams persisted in the absence of a reply from the claimant. This was not unfavourable treatment of an employee in a responsible position, and was certainly not treatment related to pregnancy.



117. The claimant's diary note for that day said she felt she "wasn't wanted in the office", and it "seemed" to her that the respondent intended to replace employees with new members of staff. This was another example of the claimant's over-sensitive and negative interpretation of events, and was not a reasonable view to take of the respondent's actions.
118. The next allegations relate to the meeting of 10 April 2018. We have found that Mrs Adams did not imply that the claimant should not be off sick due to morning sickness, and we preferred the respondent's evidence on this point. The allegation that the claimant's pregnancy would not stop the business plans moving forward overlaps with the discussion on 14 March. If such a comment was made, we are satisfied that it would have been worded more neutrally, and find nothing unfavourable in the respondent saying it would be moving ahead with its plans.
119. The claimant alleged that Mrs Adams dismissed her becoming upset at this meeting as it was "just [her] hormones". This was denied, and the claimant's account of what prompted the comment was inconsistent. We are not satisfied that such a comment was made, or made dismissively, and conclude that this allegation is also not proved.
120. In reaching our conclusions about the events of 10 April we have taken into account the very subjective way the claimant made some of the entries in her diary. For example, she recorded various assumptions she had made about Mr Adams relaying to his wife what had been discussed on 9 April, and assumed that Mrs Adams "must have been fuming". Such notes reflected her own state of mind more than than the reality of how her managers were behaving. This meeting in particular also demonstrated the claimant's negative attitude towards her managers, and her willingness to challenge their decisions. The fact that she left work without an explanation and emailed Mr Adams saying he should "ask Andrea why" was an example of boundaries being overstepped. It is not surprising if such challenges, coupled with accusations of "wanting rid" of her, had a bearing on Mrs Adams' feelings about working alongside the claimant in the office. It does seem that Mrs Adams avoided contact after this, but this was to protect her mental health. It was not a response to the claimant's pregnancy so much as the claimant's conduct towards her. We noted also that Mrs Adams was reluctant to have contact with others in the office, as seen on 30 April when she turned around as soon as she arrived, and in her refusal to say goodbye to the apprentice on her last day.
121. The next allegation was that Mr Adams told the claimant on 13 April that she could not return to work until her sick note ran out, but then allowed this after speaking to HR. It was not clear to the Tribunal what the wrongdoing was here. The facts were not in dispute, but we conclude that this was the action of a reasonable and responsible employer. The claimant's GP had indicated that she was unfit for work until 22 April. In light of her view that she was fit to return early, Mr Adams took HR advice and agreed immediately to allow the claimant to come back to work. None of this amounted to unfavourable treatment.

122. At this meeting on 13 April the claimant's description of how Mr Adams had reacted to her pregnancy news on 14 March was embellished. The original diary note said that he sat back in his chair, put his pen and paper down and put his hands on his head. Mr Adams agreed with this. In her witness statement the claimant added that he sighed and put his head in his hands, both suggestive of a negative reaction to the news. When the claimant raised it again at this meeting, she accused Mr Adams of having "thrown his arms in the air" and "thrown his pen on the desk", notably more dramatic reactions than recorded in the diary.
123. The claimant told Mr Adams that she felt her job was at risk since the pregnancy announcement, but this was not based on anything the respondent had done. No redundancy situation had been contemplated by then. The assertion that this was linked to the pregnancy seems to have been based on no evidence at all, and in fact the claimant knew that the business was struggling financially such that the later redundancy discussion should have come as no surprise.
124. The claimant raised allegations about the vacancy for the new post of Operations Manager. She complained that she was not informed of it and was therefore unable to apply. We have already set out above our reasons for rejecting this allegation, not least because the claimant herself said she was aware of it and chose not to apply due to her pregnancy. We have also found that it was inaccurate to say that the job comprised half of the claimant's role, and in fact we were provided with no evidence to support that view. The claimant's job was not taken off her and given to a man.
125. The second aspect of this issue was the claimant's allegation that she was lied to by Mr Adams when he told her firstly that nobody had been interviewed, then advised that Craig Bodman had been appointed. This was not supported by the evidence, and we accepted Mr Adams' explanation that he had responded to a question about whether another candidate had been interviewed.
126. The next allegation relates to the return to work interview on 1 June 2018. Mr Adams did not deny asking the claimant if her absence was likely to happen again. The Tribunal accepts that he was reading aloud from an HR form which prompted the question. It was an insensitive question to ask in context, but we do not conclude that it was an act of unlawful discrimination.
127. Various allegations were made about aspects of the claimant's working arrangements in June and July 2018. She complained that Mr Bodman told her she had to work more unsociable hours (on call and starting at 8.00am). We are satisfied that this came about for genuine operational reasons, and that Mr Bodman was simply seeking to hold the claimant to the terms set out in her contract. As soon as the claimant protested, he agreed a compromise about start times and released her from any obligation to work on call shifts while pregnant. This was favourable to the claimant and not an act of discrimination.
128. The claimant's allegations about driving were unclear and inconsistent. She alleged that Mr Bodman told her on 2 July that she was not to drive to care homes, but on her own evidence she had not included business travel when renewing her car insurance at that time. We accepted the respondent's evidence

that the claimant felt there was no point providing the relevant paperwork due to her impending maternity leave – even though that was two months away.

129. The complaint about Mr Adams stating the wrong start date for maternity leave in his letter of 7 July was without merit. He had an understanding of the claimant's intentions regarding maternity leave which came from a conversation in the office. It transpired that his understanding was incorrect but it was a good faith attempt to formalise the arrangements. It was not unfavourable treatment but a straightforward administrative mistake which was quickly corrected.
130. The comment attributed to Mr Bodman on 27 July 2018 about the maternity appointment being “another one!!!” was not denied by him. The Tribunal accepted that this was said innocently, as a spontaneous reaction to there being two appointments in quick succession. We do not accept that this was an act of discrimination.
131. It was difficult to understand the claimant's allegation about working alone in the office. On the one hand she seemed to resent the fact that she was not permitted to drive on business for a time, and on the other hand she was feeling under scrutiny. She wanted her independence yet complained about being left alone on the office. There was no evidence to support this allegation. On the contrary, we heard a detailed account of one occasion when Mr Bodman made efforts to stay in the office with the claimant, suggesting she leave early when he was leaving. This showed an effort to avoid leaving her alone in the office. The Tribunal does not accept that the respondent committed an act of discrimination in its handling of the arrangements for working in the office.
132. The next area of complaint arose from the redundancy consultation. Perhaps surprisingly, the claimant made no allegation about the meeting with Mr Adams on 1 August when she was told her role was at risk of redundancy, but she did complain that on 8 August Mr Bodman phoned her after she had called in sick, asking if he could conduct a consultation meeting over the telephone. The Tribunal concludes that there is no merit in the suggestion that this was an act of discrimination. Mr Bodman took the step with the benefit of HR advice. An employer who believes a pregnant or sick employee's post is at risk of redundancy has a balance to strike. They cannot ignore the potential redundancy or their duty to consult the affected employee, and at the same time they are expected to be sensitive to the circumstances which may include sickness absence or maternity leave. At the time, the claimant was unwell but not yet on maternity leave. We do not criticise the respondent for making a simple phone call to find out what the claimant preferred to do: discuss the situation by phone, or wait until she was well enough to meet in person. It is clear that Mr Bodman readily accepted the claimant's response and put her under no pressure to deal with it differently. There was no unfavourable treatment and the treatment was unrelated to pregnancy.
133. The claimant complained that in a letter dated 18 August, Mr Adams mistakenly identified the date she intended to start her maternity leave after factoring in some annual leave. As with the letter of 7 July, the Tribunal was not persuaded that this

was anything other than a minor and easily resolved HR issue. It was certainly not an act of discrimination.

134. The next allegation was about the length of time the respondent felt it might take to investigate the claimant's grievance dated August 2018. It is correct to say that the respondent wrote to the claimant on 15 August advising that it may take until after her baby was born to hold a meeting about the grievance. After that further correspondence followed in which Mr Adams set out in detail his concerns about conducting an investigation which was independent of the three managers in question. The claimant initially chose the option of using ACAS to help resolve the issue, and in late November they said they were unable to help. Those facts are not in dispute, but there was no basis at all on which we could conclude that the handling of the grievance was unfavourable treatment because of pregnancy.
135. As a small employer with only two managers, the respondent was in a difficult position with the handling of the grievance. It was reasonable to take a cautious view of the procedure to follow, as neither Mr Adams nor Mr Bodman would have been impartial as investigators. The respondent took HR advice and presented the claimant with options. They made the problem clear to her with an explanation for the difficulties. While the problems undoubtedly meant the grievance would not be resolved quickly, one of the contributing factors was the claimant's absence on maternity leave and her desire not to be contacted by the respondent. The claimant was invited to discuss the next steps but once her baby was born it was understandably difficult for her to engage with this.
136. The final complaint related to the respondent's letter of 20 December 2018, putting forward a proposal to resolve the outstanding redundancy situation and the grievance. This allegation was framed in terms of whether the claimant received this letter and whether she was offered an alternative position on a salary of £16,000. The claimant questioned whether this was less than minimum wage. It was not.
137. While it is understandable that the claimant was upset to receive such a letter, she had been aware since early August that her position was at risk of redundancy. After the grievance was raised, the respondent then told her that this would be put on hold, and it took no further steps in the intervening period. The 20 December letter set out the proposal in some detail and gave the claimant the option to accept or decline the offer. Whether the new role was suitable for the claimant was a question for her and she was entitled to feel it was not suitable because of the reduction in salary. The Tribunal concludes that there was nothing in the writing of this letter which would amount to unfavourable treatment because of pregnancy.
138. Finally, had we been determining the merits of the claims we would have had difficulty drawing the inference of discrimination for a number of reasons. There were many aspects of the claimant's case where we had doubts about causation. The most obvious one is the notion that her position was put at risk of redundancy because of the pregnancy, when it was clear even to the claimant that the respondent had been struggling financially since at least the beginning of 2018. The business case for carrying out the restructure was clear and plausible.

Although it was not acted upon until after March 2018, the underlying rationale dated back to early discussions with head office which pre-dated the pregnancy. Nothing in the evidence suggested a contrived redundancy situation and even the claimant was aware of the need to improve the business's performance.

139. Other points of detail in the evidence pointed to problems at work which pre-dated the claimant's pregnancy. For example, the claimant referred to her predecessor being unfavourably treated in that Mrs Adams had been keeping an eye on her movements during the working day. The claimant said she feared ringing in sick because of how the nurses were treated. Her complaints about being ignored by Mrs Adams have to be seen in light of the latter's difficulties attending the office on health grounds, and the fact that on occasion she had been unable to engage with others, not just the claimant. In a similar vein, Mrs Padgett's statement said that the atmosphere changed dramatically from February 2018, before the respondent was aware of the pregnancy. This would be consistent with the respondent's evidence about increasing pressure from head office to turn the business around. When going off sick after the 10 April meeting, the claimant reported to her doctor that the difficulties at work dated back to Christmas 2017 when there had been a disagreement about her covering the on call work.
140. All of this suggests that the claimant was treated no differently to others working in the business, and that the reason for any treatment was not connected to her pregnancy because working relationships were already difficult.
141. For the reasons set out above, the tribunal is satisfied that none of the claimant's allegations would have been upheld on their merits, had we decided that we had jurisdiction to hear them. The evidence does not support the assertions that the respondent's actions amounted to discrimination related to pregnancy or maternity, nor discrimination because of the claimant's sex. The claimant was not subjected to unwanted conduct which met the definition of harassment in section 26 of the Act.

**EMPLOYMENT JUDGE LANGRIDGE**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 22 July 2020**

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